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ALEXANDER L. STEVAS,
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IN THE SUPREME COURT
OF THE UNITED STATES

NO. OCTOBER TERM, 1984

JOHN VINCENT WATERS,
Petitioner

V.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

BRIEF IN OPPOSITION TO THE PETITIONER'S WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

J. MICHAEL EAKIN
DISTRICT ATTORNEY
ATTORNEY FOR PETITIONER

CUMBERLAND COUNTY COURT HOUSE
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QUESTION PRESENTED

Has the Petitioner herein raised any issues of merit requiring review by this Court?

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OPINIONS BELOW

In this matter the Pennsylvania Supreme Court did not issue an opinion, but did enter an order, denying the defendant's petition for allowance of appeal, on February 14, 1985. The opinion of the Pennsylvania Superior Court, affirming the judgment of the Court of Common Pleas of Cumberland County, is reported at ___ Pa. Superior Ct. ___, 483 A.2d 855 (1984). The Court of Common Pleas issued a total of three opinions. These opinions overruled the defendant's petition to transfer his case to juvenile court, overruled the defendant's motion in arrest of judgment regarding one offense charged

against the defendant, and overruled the defendant's post-trial motions challenging his conviction of first degree murder. These are reported, respectfully, at 33 Cumberland L.J. 121 (1982), 33 Cumberland L.J. 125 (1982), and 33 Cumberland L.J. 131 (1982).

JURISDICTION

The Commonwealth of Pennsylvania objects to the basis of jurisdiction invoked by the defendant, as more fully set out herein.

CONSTITUTIONAL PROVISIONS

The Commonwealth of Pennsylvania finds the citation of constitutional provisions by the defendant to be accurate, but objects to the manner in which they are raised in his Petition for Certiorari, as more fully set out herein.

STATEMENT OF THE CASE

On October 14, 1981, the body of eleven year old Steven Turner was found in an abandoned farmhouse. The body had been partially concealed with old wooden boards and rocks. Uncontested results of an autopsy performed on the boy revealed that death resulted from multiple head injuries. Steven Turner sustained a fractured jaw, a massive fracture of the skull, a stab wound to the back, and a stab wound to the back of the neck. His wrist had been cut, and one more stab wound in the front of his neck contained the blade of the knife apparently used in the attack.

Traces of sperm were found in the victim's mouth.

John Vincent Waters, the defendant/petitioner herein, was questioned several times regarding the death of Steven Turner. On October 25, 1981, State Trooper James Corbett requested the defendant and his father to come to the Hampden Township Police Station for questioning in connection with the Turner murder.

Testimony at the defendant's suppression hearing established that father and son arrived at the station that same day. (In re: Motion to Suppress, Notes from Testimony (N.T.) at 6). Both were immediately told that the questioning pertained to the death

of Steven Turner (N.T. at 7). Miranda rights were explained in detail to both father and son. Both were told that John was considered a suspect in the Turner murder (N.T. at 8). A waiver of rights form was read to Mr. Waters and his son, and the defendant read the form over by himself (N.T. at 9-11). The defendant signed the waiver form, and seemed at ease during the questioning (N.T. at 11). This session of questioning resulted in the defendant confessing to the crimes for which he was convicted.

In his post-trial motions, the defendant alleged that the Suppression Court misapplied the then-applicable Pennsylvania "Interested Adult" Rule,

which required an interested adult to consult with the juvenile before a valid waiver of Miranda rights could be effected. In subsequent appeals, the defendant challenged the way in which this and one other test was applied, rather than challenging the constitutionality of the tests themselves.

REASONS IN OPPOSITION TO CERTIORARI

The defendant offers 28 U.S.C. §1257(3) as a ground for invoking the jurisdiction of this Court. Respondent submits that jurisdiction should not be accepted on this ground. That statute "requires that in the state courts petitioner have 'specially set up or claimed under the Constitution of the United States' that right which (he) now seeks to have this Court enforce." Webb v. Webb, 451 U.S. 493, 495, 101 S.Ct. 1889, 1891, 68 L.Ed. 2d 392, 395 (1981). In the courts below, the defendant specifically based his claims on the alleged misapplication of the "interested

adult" rule, a constitutional safeguard imposed pursuant to the requirements of Pennsylvania's Constitution. At no point in his post-trial motions did the defendant raise any claims based specifically on the federally-based policies represented by Miranda warnings.

The defendant's allegations went solely to the issue of whether the "interested adult rule" was correctly applied. After the Superior Court applied the "totality of the circumstances" test, the defendant then argued that this test was misapplied. The defendant never raised issues of federal scope, particularly issues based on this Court's holding in

Fare v. Michael C., 442 U.S. 707, 99 S.Ct. 2560, 61 L.Ed. 197 (1979), a case he now wishes this Court to overrule.

In sum, a challenge to the adequacy of the Fare v. Michael C., supra, holding based on federal constitutional grounds was raised for the first time in the defendant's Petition for Certiorari. No claims based on any federal constitutional principles had been raised in the state courts. Pursuant to the limitations contained in 28 U.S.C. §1257 and recognized in the Webb decision, supra, this Court should deny review of the issues contained in the defendant's petition.

In any event, Respondent submits that the totality of the circumstances

test provides adequate safeguards for a juvenile who is accused of a crime:

> This totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits--indeed, it mandates--inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Fare v. Michael C., supra, 442 U.S. at 725, 99 S.Ct. at 2572, 61 L.Ed. 2d at ___. The defendant points to numerous circumstances surrounding his confession to show the inadequacy of this test as applied to juveniles. Clearly, however, the very purpose of this flexible test is to include consideration of the age, experience, and maturity of a defendant where that may be relevant. The beauty of the "totality of the circumstances" test is its ability to allow consideration of all factors in each particular case.

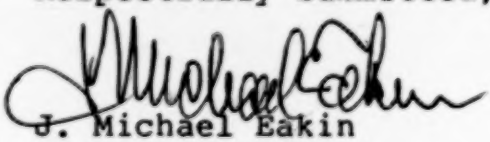
One final factor which weighs against the defendant's petition is the lack of a need for clarification by this Court in this area. The defen-

dant has not demonstrated that any significant conflicts between federal or state high courts require this Court to clarify matters. Indeed, the defendant cannot even claim that the Pennsylvania Supreme or Superior Courts passed upon a federal matter in his own case. It is submitted that the defendant in this case merely restates facts into a formulation favorable to his position, and then attempts to argue the "unfairness" of the totality of the circumstances test. Not only does such an approach ignore the true version of facts as found by the trial court, but it does not suffice as a basis to invoke this Court's jurisdiction by certiorari.

CONCLUSION

WHEREFORE, the Commonwealth of Pennsylvania requests this Honorable Court to deny the defendant's Petition for Certiorari.

Respectfully submitted,



J. Michael Eakin
District Attorney